

# The CASE of the Charter of Newark,

And the Election thereupon of Mr. SAVILE and Sir PAUL NEILE to Serve as BURGESSES in PARLIAMENT for That Town.



THE Charter bears date the 21 of March, in the 25th year of the Reign of His Majesty that now is, that is to say, in the year 1673. The Parliament then sitting, but the Patent not actually sealed, till some dayes after the Prorogation of that Session of Parliament.

This being the first Charter, by which the Town of Newark was made a Burrough, and had power to chuse Members to serve in Parliament, there was a Writ issued by the then Lord Chancellor, to the Sheriff of Nottingham, for the Election of two Burgesses, to serve in this present Parliament: in pursuance of which, the Sheriff grants a *Precipe* to the Major, and by virtue of that, Aug. 7. 1673. the Major and Aldermen then present, being Eleven, did unanimously chuse and declare the said Mr. Savile, and Sir Paul Neile, to be chosen as Burgesses for that Town, to serve in this present Parliament, and by their Indenture, made a Return accordingly, the express words of the Charter, giving the Election to the Major and Aldermen, or the major part of them then present.

And to this day, no other Return made, in October after, 1673. this Return was deliver'd to the Clerk of the Crown, and after that the said Mr. Savile, and Sir Paul Neile had the ordinary Oaths administered to them, by two of the Commissioners (Members of the House of Commons) authorised by the Lord Steward of His Majesties Household to give the said Oaths, and within some few days after, Sir Paul Neile took his place in the House, as he humbly conceived he ought to do; but upon some doubt of the invalidity of the said Charter, was commanded to withdraw; since which time the said Mr. Savile and Sir Paul Neile, have, in the several succeeding Sessions of Parliament, used their utmost endeavour to bring the matter of their Election and Validity of the said Charter to a Determination; but by reason of the several Prorogations since their Return the matter is not yet fully determined: but the Honourable House of Commons, by their Orders of the 26th of February last, have appointed the whole matter to be heard at their Barr on Friday the 16th of March instant, and ordered the said Mr. Savile and Sir Paul Neile, to give notice of the said Orders to the said Corporation, which was accordingly done, on Friday the 2 of March instant, which they are ready to make appear, if they are thereunto required.

During the time of the several Sessions since this Return made as aforesaid, there hath, at the Committees, and otherwise, divers Objections been made against the Validity of the said Charter, and the Return thereupon made by the Major and Aldermen, to which Mr. Savile and Sir Paul Neile doe humbly conceive it necessary for them to give respective and particular Answers.

1. It is objected, That the King cannot, sitting the Parliament, erect any new Burrough by Charter, with power to send Burgesses to Parliament.
2. That though he might by Charter, erect such a Burrough, yet he cannot legally restrain the Election to the Major and Aldermen only: but the power of Election must be in all the Freemen and Inhabitants.
3. That this Charter is not so limited, and was unduely procured.
4. That the Writ for this particular Election, being issued by the then Lord Chancellor, without a Warrant from the Speaker of the Honourable House of Commons, to the Clerk of the Crown, authorising the issuing out such a Writ, the Writ itself is void, and the Election thereupon made.

To the first Objection we answer,

We suppose it will be confessed on all hands, That the Kings of England have and may by their Charters, create Burroughs, for otherwise besides the injury to the King, it would shake the Foundation, by which a very great number of the Burgesses sit, and have right to sit in this present Parliament; and possibly more than half the Burgesses may be concerned in this.

Now that the King should not have the same power to create Burroughs, &c. sitting the Parliament, or during the time of a Prorogation, is, as we humbly conceive, an opinion newly started, and so frequently practised to the contrary, in the Kings creating Persons, Peers by his Patent, or calling persons to sit as Members of the House of Peers, by particular Writs, during the Sitting or Prorogation of Parliaments: and for ought we know, without any prejudice to the Publick, by the Kings retaining, and sometimes using such a Power; nor was it ever so much as excepted against by the House of Peers: And whatsoever Burroughs the King shall by his Charter at any time so create, it must be for perpetuity, and not for one time only, to serve a particular occasion, and therefore not probable to be put in practise by any King.

To the Second we answer,

That a great many Charters and Burroughs, especially before the year 1640. most Charters did appoint the Elections to be made by the few, and most Burroughs did practise the same; nor is it as we humbly conceive, an irrational thing, to put the power of Election into the hands of persons that are probably to be presumed to be Men of better reason than the generality of the populary of the Town, and less liable to be carried away, to give their Votes upon the bare account of Hospitality.

To the Third Objection we answer,

The words of the Charter it self must be the judge of this particular, for that we do not as yet conceive, that because the Major, Aldermen, Freemen, and Inhabitants of the Town of Newark, are incorporated by the name of Major and Aldermen of Newark; that therefore what Powers or Priviledges the King afterwards giveth to the Major and Aldermen, ought to be enjoyed and practised, by every Freeman and Inhabitant of the said Town, as well as by the Major and Aldermen, for if so, the King shall grant a Charter, intending to give a priviledge in the power of Election, to the Major and Aldermen only, and yet contrary to his intention, this shall be practised as well by every Freeman and Inhabitant of the said Town, as by the Major and Aldermen, to whom only he gave it. And if the Town of Newark will have Burgesses at all, by Virtue of this Charter, they must take them as the King hath given them, that is, to be chosen by the Major and Aldermen only; for by this Charter we humbly conceive, there is no others authorised to chuse: nor can any thing be more clear, than that this was the Kings intention, at the time of passing the said Charter: for in the very next Paragraph to that, by which power to send Burgesses to Parliament, is given to the Major and Aldermen only, where there is an intention really to give to the Freemen and Inhabitants, as well as the Major and Aldermen, an exemption from the payment of Stallage, Pontage, &c. the Freemen and Inhabitants are particularly named, as well as the Major and Aldermen, which in the former, giving power to elect Burgesses, is not at all mentioned. When we know what the particulars are, in which the Charter is unduely procured, we shall endeavour to give an answer to them.

To the Fourth Objection we answer,

That although it may be the just Right of the Honourable the House of Commons, that their Speaker shall issue a Warrant to the Clerk of the Crown, for the issuing a Writ for the Election of a new Member in the place of any Member, dead, Sitting the Parliament, because the Chancellor cannot judicially know the death of that Member without such Warrant; nor can know, but from the House, whether any Member formerly Returned, had right to sit in the House, or whether that Right did properly belong to some other person; of both which things the House is the competent Judge; yet we humbly conceive in the case of a new Charter, where the House hath never been possessed of any Member, by virtue of such Charter, the House cannot properly be Judges of such Members being duely elected or not, until by a Return they are possessed of such Members, and therefore till such a Return be made, they can take no notice either of the Charter, or the Election thereupon; and therefore it is necessary, that in case of a new Charter, the Writ, even sitting the Parliament, ought to be issued by the Chancellor, without any Warrant from the Speaker, that so the House may be possessed of their Members, and consequently be Judges of the Election. And this we humbly conceive not to be contrary to the Resolves and Votes of the Honourable House of Commons, February 4. 1672. nor to any other Vote we ever heard of, made before the issuing of this Writ to the Sheriff of the County of Nottingham, in the beginning of the year 1673.

Nor can the Speaker issue out any such Warrant, without a Vote of the House first passed, authorising him so to do.

Perchance it may be further objected, That the whole Charter is void, because there are three Towns newly taken in to be under the Jurisdiction of the Corporation of Newark, without the consent of the Proprietors and Inhabitants of the said Towns. To this we humbly conceive the Corporation of Newark ought to give an Answer legally, and shall satisfy our selves only to say thus much, that whether the said Towns ought to remain under the Jurisdiction of the Corporation of Newark or not is not our Business; But however we hope it will not invalidate the rest of the Charter nor our Election, by vertue thereof to sit as Burgesses in Parliament for the Corporation of Newark.